

DEPARTMENT OF STATE REVENUE

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**LETTER OF FINDINGS NUMBER: 92-0866CS
CONTROLLED SUBSTANCE EXCISE TAX
FOR TAX YEAR 1992**

NOTICE: Under IC 422-7-7, this document is required to be published in the Indiana Register and is effective on its date of publication. It shall remain in effect until the date it is superseded or deleted by the publication of a new document in the Indiana Register. The publication of this document will provide the general public with information about the Department's official position concerning a specific issue.

ISSUES

I. Controlled Substance Excise Tax — Imposition

Authority: IC 6-7-3-5; IC 6-8.1-5-1

Taxpayer protests the imposition of the controlled substance excise tax.

STATEMENT OF FACTS

Taxpayer was arrested, in Lawrence County, Indiana in September, 1992 for possession of marijuana. The Department prepared and mailed to taxpayer a controlled substance excise tax assessment, with base deficiency of \$64,452.00, on September 29, 1992. Taxpayer protested this assessment. Additional relevant facts will be provided below, as necessary.

I. Controlled Substance Excise Tax — Imposition

DISCUSSION

The Department assessed the controlled substance excise tax pursuant to IC 6-7-3-5 which states in part:

The controlled substance excise tax is imposed on controlled substances that are:

- (1) delivered;
- (2) possessed; or
- (3) manufactured;

in Indiana in violation of IC 35-48-4 or 21 U.S.C. 841 through 21 U.S.C. 852.

As taxpayer was found in possession of marijuana, the Department assessed the tax, and pursuant to IC 6-8.1-5-1(b), "The notice of proposed assessment is prima facie evidence that the department's claim for the unpaid tax is valid.

The burden of proving that the proposed assessment is wrong rests with the person against whom the proposed assessment is made."

Taxpayer failed to appear at the administrative hearing scheduled to review his protest of the controlled substance excise tax. Alternatively, taxpayer failed to submit any evidence which satisfies his burden of proving the assessment was invalid.

FINDING

Taxpayer's protest is denied.